

## Insurance for Small Business

# Toxic Clean Up and Insurance

If your business must clean up environmental contamination, your current and former insurers may be required to cover some or all of the cleanup expenses.

Environmental clean up is confusing and complex. In many cases, pollution occurs years before someone discovers the damage and the need for clean up emerges. As a result, businesses file claims long after an insurance policy was in force. By then, they may have lost or discarded copies of the policy. To add to the confusion, more than one insurance company may have been involved, and coverage may have overlapped.

### **Regulations exist to help consumers resolve cleanup insurance claims**

The Office of the Insurance Commissioner adopted rules in 1995 to help businesses and public agencies resolve environmental cleanup insurance claims. The rules encourage the insurer and the insured to discuss and settle claims through mediation – not through lengthy and costly court battles. The rules require insurers to:

- Investigate thoroughly and promptly all lost policy claims.
- Provide facts about the issuance and terms of a policy they knew or discovered during an investigation.
- Provide copies of all forms applicable to environmental claims issued during the time frame in question, if they cannot identify a policy or verify the terms, conditions or exclusions of the policy.

Both the insurer and the insured must show cooperation.

### **Tips and suggestions for reconstructing lost insurance policies**

- Ask the insurer to search its records, including its computer systems and regional archives. The insurer must begin the search within 15 days of receipt of your written request.
- Check with the agent or broker who sold you the policy. Some keep records for long periods.
- Call your lawyer. If he or she assisted you with matters about the property or business, or handled a lawsuit involving a claim, they may have a copy of the insurance policy.
- Check with the owner who sold you the business. If they passed the policy on to you, they may still have a copy of the records.
- If you sold the business, check with the buyer. If you passed the policy on to them, they may still have the records.

**If the previous methods do not produce results, check for the following:**

- Agent, broker or insurance company correspondence.
- Corporate records, such as start-up business plans.
- Board meeting minutes where insurance was an issue.
- Banking records, such as cancelled checks, or loans and lines of credit that may have required proof of insurance.
- Legal requirements for insurance, such as federal, state, or local laws or regulations that require certain types of insurance (permits or licenses issued by a governmental agency or utility may contain policy information).
- Financial or legal records from bookkeepers, certified public accountants, tax preparers, lawyers, and from the Internal Revenue Service or from state or local tax and revenue agencies.
- Additional insured people, such as subcontractors, vendors, distributors, employees, investors, private lenders, or easement grantors.
- Policy records from neighboring businesses could reveal information about the coverage for your property.

Successful reconstruction of a lost policy can make a critical difference in whether or not you succeed in an environmental cleanup claim or any other claim.

**Special Note:** Washington Administrative Code (WAC) [284-30-900-940](http://www.wac.wa.gov/284-30-900-940) applies to toxic clean up and insurance.

**The Office of the Insurance Commissioner can help you!**

If you have any questions or need additional information about your rights as an insurance consumer, call our Insurance Consumer Hotline at

**1-800-562-6900**

or visit our Web site at

**<http://www.insurance.wa.gov/>**